

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Nos. 1:05-cv-178 / 1:94-cr-042
	)	<i>Edgar</i>
GARLIN L. MYERS	)	

**MEMORANDUM**

The Court has received a document titled motion to vacate [Court File No. 1] from Garlin L. Myers (“Myers”). The Court construes it as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Myers challenges his November 23, 1994, convictions for unlawfully conspiring to possess cocaine, a Schedule II controlled substance, with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and 846, and knowingly and intentionally using and carrying a firearm during and in relation to the drug trafficking offense for which he was convicted, in violation of 18 U.S.C. § 924(c)(1). Myers contends he is actually innocent of each conviction [Court File No. 1].

This is Myers’s second § 2255 motion challenging his 1994 convictions and sentence. His first § 2255 motion alleged (1) his 924(c) conviction should be vacated because the Court erred by amending the indictment and instructing the jury on the Pinkerton Doctrine, and the jury did not specify whether they found him guilty under the “use” or “carry” prong; and (2) he received ineffective assistance of counsel. Petitioner’s first § 2255 motion was dismissed, after the Court conducted a hearing on his ineffective assistance of counsel claim. *United States v. Garlin Myers*, Civil Action No. 1:98-cv-101 (E.D. Tenn. 2001).

In accordance with the “Antiterrorism and Effective Death Penalty Act of 1996,” effective April 24, 1996, Myers cannot file a second or successive § 2255 motion in the district court until he has moved in the United States Court of Appeals for the Sixth Circuit for an order authorizing the district court to consider the motion. This Court has not received an order from the Sixth Circuit authorizing the Court to consider the pending motion.

Accordingly, the Clerk will be **DIRECTED** to **TRANSFER** this action to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631. *See Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997).

An order will enter.

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*/s/ R. Allan Edgar*  
R. ALLAN EDGAR  
CHIEF UNITED STATES DISTRICT JUDGE